



January 26, 2022

James S. Frederick
Acting Assistant Secretary of Labor
for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

**Re: Advance Notice of Proposed Rulemaking on Heat Injury and Illness Prevention
in Outdoor and Indoor Work Settings, Docket No. OSHA–2021–0009**

Dear Mr. Frederick:

The New Orleans Workers' Center for Racial Justice (NOWCRJ) appreciates the opportunity to comment on the Occupational Safety and Health Administration's (OSHA) advance notice of proposed rulemaking on heat injury and illness prevention in outdoor and indoor work settings. As described in more detail below, our worker members are not now adequately protected from intense heat. We urge OSHA to act quickly and boldly to protect workers from increasingly dangerous heat in their workplaces.

NOWCRJ is a member-based non-profit organization by and for the vulnerable, the poor, and Louisiana's oppressed. We were founded as a workers' rights and racial justice response to Hurricane Katrina by a group of black and immigrant workers who came together from public housing developments, FEMA trailer parks, day labor corners, and labor camps across Louisiana. The dignity and rights of workers are central to our organizational purpose and have been since the beginning. We support our members in organizing and building grassroots campaigns to advance these missions.

Our members, who are black and immigrant workers, work in some of the most physically difficult and demanding jobs in Louisiana—including construction, loading, and unloading delivery trucks in warehouses, commercial laundry, and dishwashing facilities that service Bourbon Street hotels, landscaping, and crayfish processing. Many of our members are immigrants who do not speak or read English. We've interviewed these workers and field organizers to prepare this comment and describe their experiences with heat in their workplaces below. Their experiences are relevant to several of the questions asked by OSHA in its ANPRM, including:

(62) What are the limitations associated with implementing water, rest, and shade effectively in indoor and outdoor work settings?

(63) How are work-rest cycles currently implemented in indoor and outdoor work settings? What are the limitations for implementation?

(65) How do productivity or output-based payment schemes affect the ability of workers to follow heat illness and injury prevention training, guidance, or requirements?

(66) How do productivity or output-based payment schemes affect employer implementation of heat illness and injury prevention training, guidance, or requirements?

Heat Risks Faced by Louisiana Workers

Workers in Louisiana without air conditioning increasingly do their jobs in punishing and dangerous heat. The state currently experiences about 35 days per year deemed dangerous or extremely dangerous by the National Weather Service Heat Index (a Heat Index value of 103 degrees or more).¹ This is projected to triple, to almost 115 days, by 2050. *Id.* Louisiana is, accordingly, among the states projected to be most badly affected by extreme heat. *Id.*

New Orleans, where many of our members work, is even hotter than the state as a whole. Urban areas, which can trap heat, are frequently significantly warmer than the surrounding rural areas.² On average summers in New Orleans are 2.2 degrees warmer than nearby rural areas, but the difference can be as great as 16 degrees. *Id.* And New Orleans experiences an average of 17 more days above 90 degrees each year than those rural areas.

OSHA currently provides information on employers' responsibility to protect workers from extreme heat.³ As the agency explains, employers with workers exposed to high temperatures should establish a complete heat illness prevention program, including providing workers with water, rest, and shade; managing workloads to allow new or returning workers to acclimatize to heat; planning for emergencies and training workers on prevention, and monitoring workers for signs of illness. *Id.* But the members we spoke with do not receive these protections completely or effectively.

Freight Truck Loading and Unloading

Some of our members work in warehouse facilities for trucking companies. They load and unload consumer goods and grocery items delivered by eighteen-wheel semi-tractor trucks. These warehouses are not air-conditioned. When trucks fill their delivery bays, the warehouses

¹ http://assets.statesatrisk.org/summaries/Louisiana_report.pdf

² <https://www.climatecentral.org/news/urban-heat-islands-threaten-us-health-17919>

³ <https://www.osha.gov/heat>

are effectively entirely walled off from the outside with very little airflow. On hot days, our members tell us the temperature can exceed 100 degrees in the warehouse. It is so hot that workers can (and have) burned themselves on the metal parts of the trucks.

The cooling mechanism in these warehouses is industrial ceiling fans. The workers tell us that these fans move so slowly and provide no effective cooling; instead, they just circulate hot air. The workers have access to a machine with ice and water. They also have access to an airconditioned break room, which the workers find helpful when they can use it during breaks.

Our members in these facilities do not receive effective heat education from their management. While there are some posters regarding heat injury and illness, they are not prominently displayed. Workers do not rely on them. Managers instruct employees to “use your judgment” concerning heat and to stay hydrated or take a break. However, managers do not try to identify workers showing signs of heat illness or injury; instead, workers must self-identify. Nor is there is no formal requirement of extra breaks on dangerously hot days.

Problematically for these workers and their ability to prevent heat illness and injury, the workers we spoke with are evaluated and paid based on a quota system, which stays the same regardless of the heat. Managers watch workers and identify those who are moving too slowly. Slower workers receive verbal warnings and threats, such as, “if you keep moving slowly, you won’t be here long.” One worker was moved to a different shift because he wasn’t moving quickly enough. The shift change upended his childcare arrangements, creating significant difficulty for his family. Our members are extremely aware that they have no job protections and need to meet their quotas to keep their jobs. This system compels them to keep moving at a regular pace even on high heat days.

Our members in these warehouses are also discouraged from taking breaks, which makes it difficult to prevent overheating. They are provided with thirty minutes for lunch over a ten-hour shift. They were not aware of any additional required breaks. They can use this time in the air-conditioned break room, but other breaks are discouraged. One manager commented that the break room is problematic because it encourages workers to sit down. Workers that have been moving slowly in response to heat are motivated to skip breaks to attempt to maintain their quota.

Workers are not provided with equipment to protect them from the heat on extremely hot days. They bring their own heavy-duty gloves to protect their hands from burns from the metal parts of trucks and the metal barrels they are hauling. They tell us that they wish the management would provide electrolyte popsicles, which would provide cooling, hydration, and energy.

These workers described multiple dangerous events that they understand were caused by the heat. For example, on one day when it was more than 100 degrees in the warehouse (and more than 90 degrees outside), a worker began to feel very ill and as he would faint. They gave him ice and water (which is not necessarily the recommended treatment, but they did not have

other information)⁴ and called an ambulance, which took him away. He was back at work the next day. Their management did not provide any information about what had happened, how to prevent it in the future, or proper treatment. Instead of learning from this experience how to protect themselves from the heat, our members were primarily aware that this employee had had to use his personal insurance for the ambulance at a significant cost. We believe that this cost would discourage workers from calling an ambulance in the future.

On another extremely hot day, one of the metal barrels that they were loading was punctured. Our members believed that the heat weakened the metal, making the puncture more likely. The material inside was a biohazard and cleaning it up required calling the state police and a biohazard team.

Hospitality Services

Many of our members also work in warehouses that provide services for New Orleans hotels, such as linens and dishware. These warehouses are also not airconditioned and, on hot days, the warehouses are typically warmer than outside. Our members describe the conditions as very hot, but, workers are provided with very little protection against heat injury and illness.

Our members told us that the only mechanism to cool the warehouse in which they work is industrial fans on the ceiling. Just as with the freight warehouses, these fans are slow-moving and do not provide effective cooling. Some of the line workers we spoke with would like to bring in their personal fans to provide cooling at their stations, but they are prevented from doing so because plugging those fans in would overload the warehouse electrical system.

Some of our members working in these warehouses told us that their employers provided more breaks on very hot days. This was not typically done according to a formal policy, however, but instead on an ad hoc basis. Problematically, there is no alternate space in which to take breaks, such as an airconditioned break room or cooling facility. Workers must take their breaks in the same hot warehouse conditions.

Workers in these hospitality warehouses also told us that they are not provided with cold water. The water in the bathroom facilities is not temperature controlled, meaning that water from the sinks is hot in the summertime.

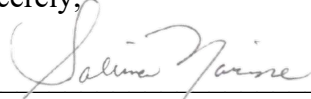
We applaud this initial step by OSHA toward a heat stress rule. We encourage the agency to move expeditiously to propose and finalize a rule with robust protections for all workers. The final rule should address the following:

⁴ The CDC recommends sipping water as a treatment for heat exhaustion, but not giving anything to drink for heat stroke. See <https://www.cdc.gov/disasters/extremeheat/warning.html>.

- Effective cooling and hydration opportunities.
- Employer-provided necessary heat protective gear.
- Meaningful and actionable education for workers.
- The barriers to workers seeking heat-related medical care while at work.
- The ways in which pay structures can disincentivize appropriate protection measures.
- The reasons workers may not take advantage of optional protections and consider requiring that workers do so.

We appreciate your consideration of this comment. If you have any questions or would like to discuss them further, please contact our counsel, Robin F. Thurston, Democracy Forward Foundation, rthurston@democracyforward.org.

Sincerely,



Deputy Director